

**2002 ENVIRONMENTAL NEGOTIATIONS COMPETITION
CONFIDENTIAL INSTRUCTIONS FOR ORCA ATTORNEYS
ROUND 1**

ORCA knows that it has a strong legal position to insist on an EIR. An EIR, however, may or may not get ORCA what it wants. The County could do a less than thorough EIR, find few or no impacts, approve the project, and force ORCA to sue. ORCA has limited resources, and cannot count on legal representation, as it has no money to pay counsel. Counsel can recover fees under CEQA if ORCA wins, but that could be a long-term prospect. In addition, ORCA would like to establish the precedent of a worker health study, and it is quite intrigued by Mendoza's proposal of a \$300,000 grant.

ORCA would love to choose the consultants for the various impact studies and would love to have an agreement from Mendoza that the dairy will incorporate any mitigation identified by the studies. ORCA recognizes that such a possibility is unlikely. It will settle for significant input into selecting the consultants and in defining the nature and scope of studies. ORCA believes strongly that any mitigation identified as appropriate by the studies must be presumed appropriate and that Mendoza must show why such mitigation will not be done. ORCA will agree to a mediation process for determination of mitigation, as long as Mendoza pays for the process, and as long as a court can make the final determination if mediation fails. ORCA is willing to allow the dairy to proceed simultaneously with the studies (as opposed to awaiting completion of the studies) *only* if it has a sufficient belief that mitigation will be done. Allowing the dairy to proceed before completion of the studies is a large concession, and should only be given if ORCA gets concessions on mitigation.

ORCA very much wants to have a worker health and safety study completed so that it can pursue such a study at other dairies. The existence of the study is more important to ORCA than requiring that any particular conclusions of the study be immediately implemented. ORCA believes with such a study it will have leverage with the County and State to force worker health and safety measures.

ORCA wants the \$300,000 grant proposed by Mendoza. It will make ORCA a significant voice on dairy issues in the County. On the other hand, it doesn't want to alienate its attorneys, and may need them, for example, in litigation with the County. The attorneys have made it clear to ORCA that fees are essential. The attorneys believe, and ORCA reluctantly concurs, that between \$40,000 and \$75,000 is appropriate. The attorneys could accept some portion as "costs," but only about \$10,000, as that is the actual amount of cost incurred. Alternatively, ORCA could take a total amount described as "fees and costs." Both the attorneys and ORCA recognize the sensitive and difficult nature of this issue and that Mendoza does not like the attorneys and wanted to create this potential conflict between ORCA and its attorneys. *See, e.g., Evans v. Jeff D.*, 475 U.S. 717 (1986).

Mendoza has been asked to make an initial proposal to set the negotiations in motion.